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No. 14-857

IN THE

Supreme Court of the United States

CAMPBELL-EWALD COMPANY,

Petitioner,

v.

JOSE GOMEZ,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND BUSINESS ROUNDTABLE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether a case becomes moot, and thus beyond the judicial power of Article III, when the plaintiff receives an offer of complete relief on his claim.

2. Whether the answer to the first question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23, but receives an offer of complete relief before any class is certified.

3. Whether the doctrine of derivative sovereign immunity recognized in *Yearsley* v. *W.A. Ross Construction Co.*, 309 U.S. 18 (1940), for government contractors is restricted to claims arising out of property damage caused by public works projects.

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INTEREST OF *AMICI CURIAE*[1]

Amicus curiae the Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation, representing 300,000 direct members and representing indirectly the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every geographic region of the United States. An important function of the Chamber is to represent the interests of its members by participating as *amicus curiae* in cases involving issues of national concern to American business, including cases raising significant questions for companies subject to potential class actions and collective actions. *See, e.g.*, *Genesis Healthcare Corp.* v. *Symczyk*, 133 S. Ct. 1523, 1528 (2013) (addressing the effect of an unaccepted Rule 68 offer on an FLSA collective action where Chamber submitted petition- and merits-stage *amicus* briefs); *Wal-Mart Stores, Inc.* v. *Dukes*, 131 S. Ct. 2541 (2011) (addressing standard for class certification in case where Chamber submitted petition- and merits-stage *amicus* briefs).

The Business Roundtable ("BRT") is an association of chief executive officers of leading U.S. companies that together have $7.2 trillion in annual revenues and nearly 16 million employees. BRT member

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[1] Pursuant to this Court's Rule 37.2(a), *amici* timely notified all parties of their intention to file this brief, and letters of consent from all parties to the filing of this brief have been submitted to the Clerk. Pursuant to this Court's Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

companies comprise more than a quarter of the total value of the U.S. stock market and pay more than $230 billion in dividends to shareholders. The BRT was founded on the belief that businesses should play an active and effective role in the formation of public policy, and participate in litigation as *amici curiae* where, as here, significant business interests are at stake.

The Chamber and BRT are committed to filing briefs in important cases that offer opportunities for this Court to clarify the law and thus help facilitate their members' compliance with it, including with the statute at issue here, the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.* Many of the nation's businesses dedicate significant time, energy, and resources to achieve such compliance. These efforts are undermined by the burdens and expenses of defending private lawsuits prosecuted not by plaintiffs with a personal stake in the outcome as required by Article III, but by lawyers in search of attorneys' fees. The Ninth Circuit in this case, in direct contravention of this Court's Article III jurisprudence, sanctioned exactly such lawyer-driven suits by holding, in conflict with several other circuits, that putative class actions may continue even though the defendants have offered the only named plaintiff complete relief and no other person has affirmatively joined the suit. *Amici* therefore submit this brief to explain the importance of the issues presented by the Petition and the urgent need for this Court's review.

SUMMARY OF ARGUMENT

This case presents the important question whether class action lawsuits may proceed even after a full settlement offer has mooted the only named

plaintiff's claim. Such "headless" class actions cannot be squared with Article III, Rule 23, due process, and fundamental principles of legal ethics, as the Fourth, Seventh, and Eighth Circuits have recognized. Pet. for Writ of Cert. 22. Yet in the Third, Fifth, Ninth, Tenth, and Eleventh Circuits, class actions may continue without a named plaintiff who has an active stake in the litigation. *Id.* at 21.

Allowing such class actions to proliferate harms defendants and the judicial system alike, because it encourages lawsuits and discourages settlements. It especially harms plaintiffs, who may succumb to pressure to reject full settlement offers—thereby assuming liability for Rule 68 costs at the conclusion of the case—all so that putative class counsel can pursue the lawsuit on a classwide basis in hopes of obtaining substantial legal fees.

Certiorari is warranted to resolve the conflict among the courts of appeals on this important issue and to stop this dangerous trend in class litigation for several reasons.

First, allowing a putative class action to continue when there is no live controversy between the named plaintiff and the defendant violates Article III's case or controversy requirement, harms plaintiffs, and invites gamesmanship. Specifically, the decision below allows putative class counsel to maintain federal lawsuits for their own financial benefit—even where their only client stands to gain nothing, but potentially to lose much, by rejecting a full settlement offer. Article III prohibits the use of federal courts to litigate cases in which no plaintiff has any actual stake in the litigation.

Second, the rule adopted by the Ninth Circuit below does violence to Rule 23(a)(4)'s adequacy requirement, which requires that "the representative parties will fairly and adequately protect the interests of the class," by driving a wedge between the interests of putative class counsel and the named class representatives. It does so by incentivizing lawyers to encourage their clients *not* to accept full settlement offers and to assume the hefty risks of litigating in the face of a Rule 68 offer simply to keep putative class actions alive. And it effectively guts the commonality and typicality requirements of Rule 23(a)(2) and (a)(3), because a named plaintiff with a moot claim cannot "'possess the *same interest* and suffer the same injury' as the class members." *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 625–26 (1997) (emphasis added).

Third, a rule that a full settlement offer moots a class action is consistent with this Court's precedents and with the policy considerations animating the applicable statutes. This is particularly true in the context of statutes with reticulated damages provisions such as the TCPA, which contemplates that a defendant will pay statutory damages only to the handful of plaintiffs who feel aggrieved enough to sue over an errant telemarketing phone call or text message, and not be subjected to potentially ruinous liability to hundreds of thousands of unnamed, absent individuals.[2]

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[2] This case also presents the related question whether an unaccepted settlement offer for complete relief in fact moots a plaintiff's claim. Petitioner Campbell-Ewald persuasively demonstrates that such an offer does render the plaintiff's claim moot and ably explains why this issue merits a grant of

ARGUMENT

I. PERMITTING PUTATIVE CLASS ACTIONS TO PROCEED WITHOUT AN INTERESTED NAMED PLAINTIFF VIOLATES ARTICLE III AND RULE 23, HARMS PLAINTIFFS, AND INVITES ABUSE AND GAMESMANSHIP

This Court has repeatedly recognized that the more novel and expansive the class action invention, "the greater the likelihood of abuse." *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 842 (1999); *see also Wal-Mart Stores, Inc.* v. *Dukes*, 131 S. Ct. 2541, 2561 (2011) (rejecting the Ninth Circuit's "Trial by Formula" as a "novel project" forbidden by the Rules Enabling Act). The Ninth Circuit's most recent invention—permitting putative class actions to continue even when *no named plaintiff has a live controversy*—defies reason and invites precisely the abuse forbidden by Article III, Rule 23, due process, and fundamental principles of legal ethics. It incentivizes putative class counsel to discourage their clients from accepting full settlement offers, thereby potentially placing them on the hook for the defendant's costs if they lose, with no upside if they win. The Court should grant review to hold that federal courts should not play hosts to such gamesmanship.

[Footnote continued from previous page]

certiorari. Pet. for Writ of Cert. 13–21. *Amici* agree and will not repeat Petitioner's arguments here.

A. The Rule Adopted By The Third, Fifth, Ninth, Tenth, And Eleventh Circuits Violates Article III, The Rules Enabling Act, And Due Process

The "Case" or "Controversy" requirement of Article III, Section 2 grants federal courts authority to resolve only "the legal rights of litigants in actual controversies." *Valley Forge Christian Coll.* v. *Am. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982) (internal quotation marks omitted). A plaintiff may invoke federal-court jurisdiction only if he possesses a legally cognizable interest, or "personal stake," in the outcome of the action. *Genesis Healthcare Corp.* v. *Symczyk*, 133 S. Ct. 1523, 1528 (2013) (internal quotation marks omitted). This personal stake must "be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 67 (1997) (internal quotation marks omitted). Therefore, when a plaintiff's stake in the suit is extinguished, so too is the court's jurisdiction. *Id.*

The decision below creates a loophole that eviscerates these basic Article III principles for class actions. The Ninth Circuit concluded that putative class actions may continue even though the defendants have offered the only named plaintiff complete relief and no other plaintiff has joined the suit. *See* Pet. App. 5a. That conclusion rests on nothing more than speculation that further discovery and litigation *might* motivate others to join a suit being prosecuted by counsel who no longer represents a client with a personal stake in the outcome of the case. *Id.* at 6a (declining to extend to Rule 23 class actions this Court's holding in *Genesis Healthcare*, 133 S. Ct. at

1532). The Third, Fifth, Tenth, and Eleventh Circuits, like the Ninth, permit class actions even where the named plaintiff's individual claim has become moot. Pet. for Writ of Cert. 21–22.

The rule adopted by these circuits runs roughshod over Article III, which prohibits the continuation of litigation based solely on speculation that the attorney will be able to locate a new plaintiff, not presently before the court, who might have a live dispute with the defendant. *See Genesis Healthcare*, 133 S. Ct. at 1528 ("If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, *the action can no longer proceed and must be dismissed.*") (emphasis added) (internal quotation marks omitted). Federal courts may resolve only "present case[s] or controvers[ies]," *City of L.A.* v. *Lyons*, 461 U.S. 95, 102 (1983), that "affect the rights of litigants *in the case before them*," *Preiser* v. *Newkirk*, 422 U.S. 395, 401 (1975) (emphasis added). Put simply, "[f]ederal jurisdiction cannot be based on contingent future events." *Standard Fire Ins. Co.* v. *Knowles*, 133 S. Ct. 1345, 1349 (2013).

The same rule *must* apply in the class action context. "Rule 23's requirements must be interpreted in keeping with Article III constraints, and with the Rules Enabling Act, which instructs that rules of procedure 'shall not abridge, enlarge or modify any substantive right,' 28 U.S.C. § 2072(b)." *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 613 (1997); *see also Carrera* v. *Bayer Corp.*, 727 F.3d 300, 307 (3d Cir. 2013) (holding that "[a] defendant in a class action has a due process right to raise individual challenges and defenses"); *McLaughlin* v. *Am. Tobacco Co.*, 522 F.3d 215, 232 (2d Cir. 2008) (same). Thus,

cases presenting no live controversy cannot continue in federal court simply because the complaint contains class allegations—particularly because the absent putative class members are not parties "'to the class-action litigation *before the class is certified.*'" *Standard Fire*, 133 S. Ct. at 1349 (citation omitted); *see also Smith* v. *Bayer Corp.*, 131 S. Ct. 2368, 2380 (2011) (holding that unnamed putative class members "are not parties to the suit" before certification).

Rule 23 is not an end-run around Article III—a bedrock constitutional requirement that must be satisfied "at all stages" of any federal litigation, class actions or otherwise. *Preiser*, 422 U.S. at 401 (internal quotation marks omitted). And allowing cases to continue solely on behalf of absent, unnamed persons would yield precisely the advisory opinions the case or controversy requirement was intended to avoid. It would also turn the rules governing class actions on their head, effectively *exempting* them from Article III's stringent requirements, even though class actions are the "exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Dukes*, 131 S. Ct. at 2550; *see also Am. Express Co.* v. *Italian Colors Rest.*, 133 S. Ct. 2304, 2310 (2013) (Rule 23 "imposes stringent requirements for certification that in practice exclude most claims"). The potential for abuse under such a regime abounds and warrants this Court's intervention.

B. Permitting Class Actions To Proceed Without A Single "Interested" Named Plaintiff Undermines Rule 23's Procedural Safeguards And Harms Plaintiffs

Rule 23 "provide[s] 'structural assurance of fair and adequate representation'" for named plaintiffs and absent class members, *Ortiz*, 527 U.S. at 856, protections that grow more vital as class-action practice becomes more "adventuresome," *Amchem*, 521 U.S. at 617.

To that end, the class representative must "be part of the class and 'possess the *same interest* and suffer the same injury' as the class members." *Amchem*, 521 U.S. at 625–26 (emphasis added) (quoting *E. Tex. Motor Freight Sys., Inc.* v. *Rodriguez*, 431 U.S. 395, 403 (1977); *see also Dukes*, 131 S. Ct. at 2551 ("Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'") (citation omitted). "The adequacy-of-representation requirement [and the] commonality and typicality criteria" serve as critical "guideposts" for determining whether the named plaintiff's claim and the class claims are "so interrelated that the interests of the class members will be fairly and adequately protected." *Amchem*, 521 U.S. at 626 n.20 (quoting *Gen. Tel. Co. of Sw.* v. *Falcon*, 457 U.S. 147, 157 n.13 (1982)).

Where, as here, the named plaintiff's claims have been mooted by a full offer of settlement, he necessarily lacks the "same interest" as the absent putative class members who have not received such an offer. Whatever has motivated the lead plaintiff to spurn a "generous immediate payment" undoubtedly

"tugs against the interest" of the class he ostensibly represents. *Amchem*, 521 U.S. at 626. A named plaintiff with such misaligned interests is both an atypical and inadequate class representative as a matter of law. *Id.*

Rule 23 also requires class counsel to adequately represent their clients' interests. Fed. R. Civ. P. 23(a)(4). The touchstone of adequate representation is the alignment of counsel's and the client's interests. *Falcon*, 457 U.S. at 157 n.13. Yet the decision below creates "perverse incentives," *Dukes*, 131 S. Ct. at 2559, for lawyers to discourage their clients from accepting full settlement offers, even though the client will almost certainly recover less at the conclusion of the litigation *and* may even have to pay all parties' costs under Rule 68(d), with no potential for gain but his lawyer's. *Cf. AT&T Mobility LLC* v. *Concepcion*, 131 S. Ct. 1740, 1753 (2011) (noting that plaintiffs would have been "better off" accepting an arbitration offer "than they would have been as participants in a class action") (emphasis added). Thus, the decision below pits the client's interests against those of his counsel at this critical juncture.

Worse, the Ninth Circuit's ruling permits lawyers to fully control class litigation without ever being accountable to a client with a personal interest in the lawsuit. It is a foundational principle of legal ethics that the attorney should abide by the *client's* preferences and litigation goals. *See* Model Rules of Prof'l Conduct R. 1.2(a) (2000) ("A lawyer shall abide by a client's decisions concerning the objectives of representation . ."). The rule established by the Third, Fifth, Ninth, Tenth, and Eleventh Circuits turns this well-established model upside down, with troubling and uncertain consequences.

Class litigation is *already* excessively lawyer-driven and "dysfunctional," because often "the principals [i.e., the plaintiffs] cannot effectively monitor their agent [i.e., their lawyer]." John C. Coffee, Jr., *Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation*, 100 Colum. L. Rev. 370, 371 (2000). Lawyers freely "ignore the preferences of individual class members" and "define the goals of the litigation differently than they otherwise would [in the non-class action context]." *Id.* at 379.[3] And that is when class counsel actually have an interested client to whom they theoretically owe fiduciary duties; one can only imagine the results in a system that permits lawyers lacking clients with a personal stake in the case's outcome to maintain putative class actions. This lack of accountability is even more acute in the context of *putative* class actions, where no Rule 23 inquiry has taken place to examine the adequacy of class counsel and to formal-

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[3] *See also, e.g.*, *Pearson* v. *NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (rejecting class settlement, and noting the "incentive of class counsel, in complicity with the defendant's counsel, to sell out the class," due in part to the fact that "[c]lass counsel rarely have clients to whom they are responsive"); *In re Dry Max Pampers Litig.*, 724 F.3d 713, 717–18 (6th Cir. 2013) (rejecting class certification under the adequacy prong and observing that in class actions, "unlike in virtually every other kind of case," the court "cannot rely on the adversarial process to protect the interests of the persons most affected by the litigation—namely, the class"); Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 Colum. L. Rev. 149, 163 (2003) (recognizing the general tendency of class counsel to "embrace a settlement inadequate for all, many, or some class members in exchange for the prospect of obtaining a fee award").

ly establish the duties owed to the absent class members.

The decision below also invites gamesmanship by rewarding lawyers who successfully dissuade their clients from accepting full offers of judgment.

This Court has repeatedly rejected gamesmanship by class counsel who are more concerned with their fees than with their clients' recovery. In *Standard Fire*, 133 S. Ct. 1345, this Court considered a common tactic by lawyers to "stipulate away" putative class claims above $5 million in order to evade federal jurisdiction under the Class Action Fairness Act of 2005. The Court unanimously rejected that gambit, holding that named plaintiffs and their lawyers could not bind absent class members with such self-serving stipulations.

In *Dukes*, 131 S. Ct. 2541, the Court likewise rejected an interpretation of Rule 23(b)(2) that would permit class certification when a request for injunctive and declaratory relief "predominates" over a request for monetary relief, because such an interpretation "creates perverse incentives for class representatives to place at risk potentially valid claims for monetary relief." *Id.* at 2559. That concern was not merely theoretical, as the *Dukes* plaintiffs had declined to include claims for compensatory damages in their complaint—claims that absent class members might be collaterally estopped from ever bringing—in order to minimize their monetary claims and increase their chances of Rule 23(b)(2) certification. "That possibility," this Court unanimously held, "underscores the need for plaintiffs with individual monetary claims to decide *for themselves* whether to tie their fates to the class representatives." *Id.* (emphasis in original).

These tactics all served to benefit class counsel at the expense of their clients. The decision below incentivizes similarly dangerous conduct. Clients who are pressured or manipulated into rejecting full settlement offers are not just sacrificing significant and immediate monetary relief—they also may be assuming, perhaps unknowingly, the risk of liability for Rule 68 costs at the conclusion of the litigation. No client should be put in such a position simply because her lawyer wishes to pursue a class action for a potentially bigger payday.

II. Settlements Benefit All Parties And The Judicial System

The approach of the Third, Fifth, Ninth, Tenth, and Eleventh Circuits also undermines the judicial policy in favor of settlement before trial. *See McDermott, Inc.* v. *AmClyde*, 511 U.S. 202, 211–15 (1994). Settlement "'eases crowded court dockets and results in savings to the litigants and the judicial system,'" and thus, in appropriate cases, should "'be facilitated at as early a stage of the litigation as possible.'" *Bell Atl. Corp.* v. *Bolger*, 2 F.3d 1304, 1314 n.16 (3d Cir. 1993) (quoting Fed. R. Civ. P. 16(c) & advisory committee's note (1983)); *see also Marek* v. *Chesny*, 473 U.S. 1, 5–6 (1985) (the clear "objective" of Rule 68 "is to encourage settlements").

Defendants often make full settlement offers because they believe that fully compensating the plaintiff will resolve the litigation. But if the plaintiff purports to represent a class, and the putative class claims remain alive despite a full settlement with the putative representative, defendants have little incentive to make such offers, even if they would serve everyone's interest. The rule adopted by the

Ninth Circuit forces defendants to litigate every putative class action all the way through certification, even where the claims are meritless. Such a result wastes judicial resources, generates excessive litigation costs, and prevents named plaintiffs from timely receiving any compensation for their alleged injury, all the while placing them at risk for substantial costs.

The decision below is especially pernicious in cases like this, where Congress's remedial scheme contemplates individual actions and settlements. The TCPA, which prohibits certain unauthorized phone calls, faxes, and text messages, permits plaintiffs to recover up to $500 per negligent violation and up to $1,500 per knowing and/or willful violation, *plus* attorneys' fees—penalties that far outweigh the actual harm or nuisance suffered by a person on the wrong end of an errant marketing call or text message. *See* 47 U.S.C. § 227(b)(3); Richard A. Nagareda, *Aggregation and Its Discontents: Class Settlement Pressure, Class-Wide Arbitration, and CAFA*, 106 Colum. L. Rev. 1872, 1878 (2006) (explaining that the aggregation of "statutory damages that have been decoupled from claimants' actual losses" causes "troubling" and "glaring" class settlement pressure). Congress selected these amounts not to approximate a plaintiff's actual harm, but instead to "encourag[e] enforcement by *individual citizens*." *S. 1462, The Automated Telephone Consumer Protection Act of 1991; S. 1410, The Telephone Advertising Consumer Protection Act; and S. 857, Equal Billing for Long Distance Charges: Hearing Before the S. Subcomm. on Communications of the S. Comm. of Commerce, Science and Transportation*, 102d Cong. 42 (1991)

(statement of Michael Jacobson, Cofounder, Ctr. for the Study of Commercialism) (emphasis added).[4] The amounts are also sufficiently high "to deter violations by telemarketers," even if only a small percentage of affected persons choose to take action. *Id.*

Class actions distort and disturb this remedial scheme. Nothing in the legislative history of the TCPA suggests that Congress intended, or even contemplated, that telemarketing companies would face hundreds of millions or even billions of dollars of potentially ruinous liability for sending a single, mass text message, as Petitioner did here. But that is exactly the risk that exists where class actions exponentially multiply statutory damages claims. *See* Nagareda, *supra*, 106 Colum. L. Rev. at 1881 ("[C]lass settlement pressure is most troubling when aggregation would not merely enable the enforcement of cost-prohibitive claims, but in addition, would distort the underlying remedial scheme."); Sheila B. Scheuerman, *Due Process Forgotten: The Problem of Statutory Damages and Class Actions*, 74 Mo. L. Rev. 103, 115 (2009) ("Aggregating statutory damages claims warps the purpose of both statutory damages and class actions.").

Congress did not envision this type of civil enforcement. Instead, it contemplated that, in addition to enforcement by state attorneys general, *see* 47 U.S.C. § 227(g), individuals would sue in "[s]mall

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[4] *See also Concepcion*, 131 S. Ct. at 1753 (rejecting the notion "that class proceedings are necessary to prosecute small-dollar claims" when a plaintiff's arbitration agreement provides that AT&T will pay claimants a minimum of $7,500 if they obtain an award greater than AT&T's last settlement offer).

claims court or a similar court," and that the resulting "amount of damages" in *that* type of litigation is designed "to be fair to both the consumer and the telemarketer." 137 Cong. Rec. S16205 (daily ed. Nov. 7, 1991) (statement of Sen. Hollings). Defendants that make full settlement offers thus behave in accordance with the incentives Congress established; any argument that such offers frustrate the TCPA's remedial scheme is baseless.

Finally, the Ninth Circuit's concern that defendants could pretermit class actions by "pick[ing] off" named plaintiffs is exactly backward. Pet. App. 6a (internal quotation marks omitted). So-called "picking off" the class representative by making a full offer of settlement is unlikely to be an effective long-term strategy. Savvy attorneys with class action complaints in hand should have little difficulty recruiting new putative class representatives and refiling a slightly modified complaint once their original client has received the full value of his claims. The defendant must then decide whether to defend itself or to settle with these second-generation class representatives by making another complete offer of relief.

A defendant that continues to offer 100 percent of the amount claimed to every successive would-be class representative is likely to invite a feeding frenzy of litigation. Eventually, a defendant confronted with so many claims may conclude that it would *benefit* from class certification so that it can attempt to settle all of the claims against it for something less than 100 cents on the dollar. From the defendant's financial perspective, this outcome is far more ra-

tional than "picking off" individual plaintiffs one by one.

A defense strategy of resolving litigation through full settlement offers is therefore best suited for cases where putative class counsel cannot find a significant number of plaintiffs willing to step forward for a guaranteed full-offer settlement. And those are precisely the class actions that federal courts should not bend the rules to save.

CONCLUSION

For the reasons stated above and in Petitioner's brief, the writ of certiorari should be granted and the judgment of the court of appeals should be reversed.

Respectfully submitted,

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